IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 148 of 1996

in

SPECIAL CIVIL APPLICATIONNo 11645 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PETRO POLYOLS LIMITED

Versus

REGIONAL MANAGER

Appearance:

Ms. Tasnim Ahmedi withMR AMAR N BHATT with Anil Agarwalla for the appellants

M/S TRIVEDI & GUPTA for Respondent No. 1

NANAVATI ASSOCIATES for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 03/05/96

ORAL JUDGEMENT(Per: Pandit J)

The original petitioners in Spl.C.A.11646/94 have preferred the present L.P.A against the judgment of the learned single Judge.

2. The petitioners had applied for allocation of land for industrial unit with the respondent no.1 Gujarat Industrial Development Corporation (G.I.D.C. for short) and by letter dated 4.3.1986 the respondent no.1 had informed that 1,61,800 sq.mtrs. of land out of survey nos. 148 and 148P at village Mora, Taluka Chorasi,District Surat could be allotted to the petitioners. The petitioners had accepted the said offer and had paid towards the price of the said land Rs.12,45,000/- between 15.3.86 and 2.11.87. It is the case of the petitioners that due to certain difficulties they were not in a position to induct their industrial unit in time and they were informing the respondent no.1 about the developments which were taking place as regards the installation of their plant. It is their further case that they were never served with any notice for ithe cancellation of the allotment of the land of which they were given possession. The Managing Director of the petitioner No.1 Mr.P.S. Saini had gone abroad and even from U.K. he was having correspondence with respondent no.1. When he returned sometime in March 1994, he found that the possession of the land which was allotted to the petitioners was given to somebody else by defendant ono.1. Therefore, initially they sent a letter dated 5.4.94 asking the respondent ono.1 to inform them whether the land which was allotted to them was given to somebody else and under what circumstances, but no reply to the said letter was given. Hence they issued a notice to the respondent no.1 through an advocate but inspite of the service of the said notice, no reply was received by the petitioners and hence the petitioners filed writ petition No. 11645/94 on 23.9.94 and in the said writ petition, they sought the possession of the land from the respondents nos 1,2 and 3 and to restrain the respondent no.4, who had come in possession of the said land, from obstructing them in the peaceful enjoyment and the possession of the land. In the laternative, they had also sought return of the amount of Rs. 12,45,000/- paid by them.

3. In the said writ petition the respondent no.1 had taken up a contention that the petitioners had failed to utilise the land given to them for the purpose for which

it was allotted to them. Therefore, they had issued a letter dated 20.5.93 asking the petitioners to give explanation as to why there was a delay in utilising the land in question and as to why the land in question should not be taken back from them. The respondent no.1 further contended that by notice dated 25.5.93, they had informed the petitioners that they had no alternative but to rescind the said contract and therefore, the contract of allotment of land was rescinded and an order to take back possession of the land was passed. The respondent no.1 also pleaded that they had taken proceedings under the Gujarat Public Premises Eviction Act(hereinafter referred to as the said Act) for eviction of the petitioners. A notice of the said proceedings was issued on 27.7.93 and an order was passed in the said proceedings on 18.8.93 and possession of the land was taken on 20.9.93 by executing that order and thereafter, it was given to respondent no.4.

4. Respondent no.4 had contended that respondent no.4 had invested nearly large amount in the development of the said land and they had also raised certain construction towards their project of Rs. 6000 crores in the said land and the adjoining land.

5. Thus the respondents had contended that the petitioners were not entitled to the relief sought for in the said petition and the petition of the petitioners should be dismissed. The learned single Judge after hearing both the sides and after perusing the materials produced on record had come to the conclusion that the claim of the petitioners that they were not at all served with the notices dated 25.5.93 and 29.6.93 issued by the defendant no.1 and the notices of the proceedings under the said Gujarat Public Premises Eviction Act were not served on the petitioners was not correct one. He recorded such a finding of fact after perusing the materials on record and came to the conclusion that the petitioners were duly served and there was eviction of the petitioners under the said Act and consequently, present petition under article 226 of the Constitution was not maintainable and hence he dismissed the same.

6. Being felt aggrieved by the said decision the original petitioners have come before us by this L.P.A.

7. Admittedly, the petitioners have come before the court for getting relief under article 226 of the Constitution of India. It is the contention of ithe respondents that respondent no.1 had issued notice on 20.5.93 to the petitioners for the petitioners' failure

to make use of the land for the purpose for which it was allotted and consequently passed an ordser dated 29.6.93 by rescinding the said allotment and ordering resumption of the allotment. It is the case of the petitioners that both the notices as well as the order dated 20.5.93 and 29.6.93 were not at all served on them and they had not received the same. Similarly it was also contended by the petitioners before the learned single Judge that they had not received any notice of the proceedings taken against them under the said Act and as they were not served with the notice, they could not appear in the said proceedings. They further contended that they came to know of such proceedings taken under the said Act for the first time when they received a copy of the reply affidavit filed by respondent no.1. It was further contended by the petitioners that though the petitioners had issued a letter on 5.4.94 and notice through advocate thereafter and before the filing of the present petition, they had not received any reply from the respondent no.1. Now, in view of these facts it is quite obvious that there were complicated questions of facts before the learned single Judge. It is settled law that complicated questions of facts are not to be considered and decided by a court exercising jurisdiction under article 226 of the Constitution of India. With due respect to the learned single Judge, it must be said that though this is the settled legal position, the learned Judge went into the question on the strength of the document produced before him and on the basis of the pleadings of the parties and he has recorded finding on the disputed fact.In view of the settled principle of law he ought to have avoided the same. When there were complicated questions of facts it was proper on his part to refuse to exercise the jurisdiction under articled 226 of the Constitution of India and to direct the parties to go for appropriate court of law for for getting decision on the controversy between the them. Therefore, in our opinion, such findings of fact regarding service of the letters issued by the respondent no.1 for rescinding allotment as well as regarding proceedings under the said Act will have to be set aside. In our view, finding on complicated question of fact ought not to have been recorded by exercising jurisdiction under article 226 of the Constitution of India. It would be open for both the parties to agitate the question regarding service or non service of the said notices as well as the proceedings before the appropriate court. We want to make it clear that the finding recorded by the learned single Judge regarding the proper and valid service of the notice would not be binding on the said court and the court will be at liberty to come to its own conclusion. At the cost

of repetition it must be said that it would be open for the parties to raise the contention regarding the said notice as well as the proceedings under the said Act before the appropriate forum.

8. The learned counsel for the appellants has vehemently argued before us that the appellant-petitioners came to know about the recinding of the allotment as well as the proceedings under the said Act for the first time after the respondent no.1 filed reply affidavit. Then, she further contented that in view of this fact and the fact that these proceedings viz. proceedings under article 226 of the Constitution taken by the appellants in this court, if the happen to go before the appellate authority by preferring an appeal, it is clear that such appeal would be barred by delay. Therefore in these circumstances, this court should observe that the delay in preferring the said appeal should be condoned. We appreciate her anxiety as well as her submission. But we feel that it is the discretion and jurisdiction of the appellate authority to consider and decide the question of condoning the delay. We do not wish to transgress on that discretionary jurisdiction. The appellants would be at liberty to urge all the submissions made before us and even can urge additional submission before the Appellate Authority in order to convince that there is reasonable ground for condoning the delay in preferring the appeal before him. In our opinion, it is for the appellate authority to consider all the circumstances that may be brought before him and this court cannot direct or order the Appellate Authority that the Appellate Authority should decide the question of condoning the delay in a particular manner.

9. The questions which are involved in this case are complicated questions of fact and they could not be decided in a proceedings under articlde 226 of the Constitution of India. The proper remedy for the appellants is to go before the appropriate authority either by way of preferring an appeal u/s 9 of the said Act or to go before the Civil Court to get a declaration as regards the order of eviction passed under the said Act or simultaneously to have both the proceedings as per the advice the appellats may get. But we are unable to accept the contention of the appellants-petitioners that this court should exercise the discretionary powers under article 226 of the Constitution and to decide the questions raised by the petitioners -appellants regarding the alleged illegal eviction of the petitioners from the land in question and the petitioners' claim for getting back the possession of the said land. Therefore, in the

circumstances, we hold that the conclusion arrived at by the learned single Judge of rejecting the writ is quite legal and proper and we are confirming the same on the particular ground that the matter involves complicated questions of facts which could not be decided in the discretionary jurisdiction under article 226 of the Constitution of India. In the result, the order passed by the learned single Judge is confirmed and the L.P.A. stands disposed of accordingly with no order as to costs.